



RFP No: 3612

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **July 19, 2010 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Department of Information Technology Services.

Submissions offered for inclusion on the Security Hardware and Software Express Products List (EPL) to be used in the acquisition of Security Hardware and Software Products for the wide area, local area and other network based systems used by agencies and institutions of the State of Mississippi.

The Vendor must submit proposals and direct inquiries to:

Donna Hamilton
Technology Consultant
Information Technology Services
Suite 508, 301 N. Lamar Street
Jackson, MS 39201-1495
(601) 359-9613
Donna.Hamilton@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO
RFP NO. 3612
due July 19, 2010 @ 3:00 p.m.,
ATTENTION: Donna Hamilton

David L. Litchliter
Executive Director, ITS

ITS RFP Response Checklist

RFP Response Checklist: These items should be included in your response to RFP 3612.

- _____ 1) One clearly marked original response and 3 identical copy/copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- _____ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- _____ 3) *Proposal Bond*, if applicable (Section I)
- _____ 4) *Proposal Exception Summary*, if applicable (Section V)
- _____ 5) Vendor response to *RFP Questionnaire* (Section VI)
- _____ 6) Point-by-point response to *Technical Specifications* (Section VIII)
- _____ 7) Vendor response to *Cost Information Submission* (Section IX)
- _____ 8) *References* (Section X)

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SECTION I

SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, (ITS), should contact for questions and/or clarifications.

Name	_____	Phone #	_____
Address	_____	Fax #	_____
		E-mail	_____

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

Original signature of Officer in Bind of Company/Date

Name (typed or printed)

Title

Company name

Physical address

State of Incorporation

CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

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PROPOSAL BONDS

A Proposal Bond is not required for this procurement.

SECTION II

PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and 3 identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.

- 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
- 8.3 Number each page of the proposal.
- 8.4 Respond to the sections and exhibits in the same order as this RFP.
- 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
- 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
- 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
- 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 8.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
- 8.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
- 8.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
9. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.

10. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.
11. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
12. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
 - 12.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
 - 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
 - 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
 - 12.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
 - 12.5 The Vendor must submit a statement outlining the circumstances for the clarification.
 - 12.6 The Vendor must submit one clearly marked original and 3 copies of the clarification.
 - 12.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
13. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and

answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

- 13.1 The State's contact person for the selection process is: Donna Hamilton, Technology Consultant, 301 North Lamar Street, Ste. 508, Jackson, MS 39201, 601-359-9613, Donna.Hamilton@its.ms.gov.
- 13.2 Vendor may consult with State representatives as designated by the State's contact person identified in 13.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. **Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

2. **Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. **Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

4. **Written Amendment to RFP**

Any interpretation of an ITS RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the ITS website, together with the associated RFP specification. Vendors are required to check the ITS website periodically for RFP amendments before the proposal opening date at: http://www.its.ms.gov/rfps/rfps_awaiting.shtml.

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. Should you be unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this RFP and request a copy.

5. **Oral Communications Not Binding**

Only transactions which are in writing from ITS may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. **Vendor’s Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for

submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

13. Vendor Personnel

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.

14. Vendor Imposed Constraints

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

15. Best and Final Offer

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

16. Restriction on Advertising

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

17. Rights Reserved to Use Existing Product Contracts

The State reserves the right on turnkey projects to secure certain products from other existing ITS contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

18. Additional Information to be Included

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

19. Valid Contract Required to Begin Work

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

ITS will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The *Proposal Exception Summary Form* as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

5. Additional Contract Provisions

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. Contracting Agent by Law

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

7. Mandatory Legal Provisions

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
 - 7.3.1 Infringement issues;
 - 7.3.2 Bodily injury;
 - 7.3.3 Death;
 - 7.3.4 Physical damage to tangible personal and/or real property; and/or
 - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

8. Approved Contract

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
 - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
 - 8.1.2 Notification posted to the **ITS** website for the project, or
 - 8.1.3 CP-1 authorization executed for the project, or
 - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. Contract Validity

All contracts are valid only if signed by the Executive Director of **ITS**.

10. Order of Contract Execution

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

11. Availability of Funds

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

12. CP-1 Requirement

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

13. Requirement for Electronic Payment and Invoicing

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting mash@dfa.state.ms.us.

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

14. Time For Negotiations

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

- 14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.
15. **Prime Contractor**
The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.
16. **Sole Point of Contact**
ITS will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.
- 16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. ITS Approval of Subcontractor Required

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

18. Inclusion of Subcontract Agreements

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.

19. Negotiations with Subcontractor

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

20. References to Vendor to Include Subcontractor

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

21. Outstanding Vendor Obligations

- 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
- 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
- 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

22. **Equipment Condition**

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

23. **Delivery Intervals**

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

25. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

26. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

28. **Ownership of Developed Software**

28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

29. **Ownership of Custom Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Remote Access via Virtual Private Network**

Vendor must understand that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Vendor and the State agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Vendor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the State's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Vendor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the ITS Public Records Procedures established in accordance with the Mississippi Public Records Act. The ITS Public Records Procedures are available in Section 019-010 of the ITS Procurement Handbook, on the ITS Internet site at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from ITS upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor is not required to include the price of a performance bond or irrevocable bank letter of credit with his RFP proposal.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or

institution to be detrimental, abusive, or offensive to any of the staff or student body of any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number 3612.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
 - 1.1 The specification is not a matter of State law;
 - 1.2 The proposal still meets the intent of the RFP;
 - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
 - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
 - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
 - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
 - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
 - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.

4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

PROPOSAL EXCEPTION SUMMARY FORM

List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

- 1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained by going to the ITS website, <http://www.its.ms.gov>, clicking on the "Procurement" button to the left of the screen, selecting "Vendor Information", scrolling to the bottom of the page, and clicking on the link "Forms Required in RFP Responses." Vendors who have previously done business with the State should furnish ITS with their SAAS Vendor code.

SAAS Vendor Code: _____ OR Signed W-9 Form Attached: _____

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf. Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at minority@mississippi.org.

Minority Vendor Self-Certification Form Included: _____
Minority Vendor Self-Certification Form Previously Submitted: _____
Not claiming Minority or Women Business Enterprise Status: _____

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

3. **Certification of No Conflict of Interest**

Mississippi law clearly forbids a direct or indirect conflict of interest of a company or its employees in selling to the State. The Vendor must answer and/or provide the following:

- 3.1 Does there exist any possible conflict of interest in the sale of items to any institution within **ITS** jurisdiction or to any governing authority? (A yes or no answer is required.)
- 3.2 If the possibility of a conflict does exist, provide a list of those institutions and the nature of the conflict on a separate page and include it in your proposal. The Vendor may be precluded from selling to those institutions where a conflict of interest may exist.

4. **Pending Legal Actions**

- 4.1 Are there any lawsuits or other legal proceedings against the Vendor that pertain to any of the software, hardware, or other materials and/or services which are a part of the Vendor's proposal? (A yes or no answer is required.)
- 4.2 If so, provide a copy of same and state with specificity the current status of the proceedings.

5. **Non-Disclosure of Social Security Numbers**

Does the Vendor acknowledge that any information system proposed, developed, or modified under this RFP that disseminates, in any form or manner, information or material that contains the Social Security Number of an individual, has mechanisms in place to prevent the inadvertent disclosure of the individual's Social Security Number to members of the general public or to persons other than those persons who, in the performance of their duties and responsibilities, have a lawful and legitimate need to know the individual's Social Security Number? This acknowledgement is required by Section 25-1-111 of the Mississippi Code Annotated.

6. **Contracts**

A properly executed *Master Purchase Agreement* (Exhibits A and B) WITH NO EXCEPTIONS is a requirement of this RFP. It will become a part of any contract resulting from this proposal. **ITS** recommends that the customer and Vendor evaluate the need for additional contracts at the time of purchase.

- 6.1 The *Master Purchase Agreement* MUST be executed by all published Vendors that are selling directly in order to participate in this EPL.
- 6.2 The terms of the *Master Purchase Agreement* are non-negotiable. No edits or changes in the terms and conditions of this document will be made. Vendors unwilling to execute this Agreement should not submit a response to this RFP.

- 6.3 Please review Section VII, item 6.5, regarding the ARRA and non-ARRA versions of the *Master Purchase Agreement*. Indicate below which version of the contract the Vendor is choosing to execute.

_____ ARRA

_____ Non-ARRA

7. **Order and Remit Address**

The Vendor must specify both an order and a remit address:

Order Address:

--

Remit Address (if different):

--

8. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at http://www.its.ms.gov/rfps/rfps_awaiting.shtml. We will post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

SECTION VII RFP OVERVIEW

1. Request for Proposal Overview

- 1.1 Responses to this RFP will be used to produce an EXPRESS PRODUCTS LIST (EPL) that provides **ITS** clients and staff with an economical, flexible mechanism to acquire Security Hardware/Software products in full compliance with all purchasing requirements.
- 1.2 The EPL will have a specified dollar limit up to which clients may make purchases from the EPL without coming through **ITS** for approval.
- 1.3 **ITS** EPL clients include state agencies and institutions of higher learning which are under **ITS** purview and local government entities such as cities, counties, local school districts, and community colleges which are not under **ITS** purview.
 - 1.3.1 All EPL clients may make routine purchases from the EPL up to the specified dollar limits under as defined in the **ITS** Procurement Handbook, Section 011-030 *Procurement Instruments: Express Products Lists (EPLs)*.
 - 1.3.2 State agencies and institutions may be authorized to make planned purchases from the EPL over the specified dollar limits in line with their Long Range Information Systems Plan, as defined in the **ITS** Procurement Handbook, Section 013-080 *Procurement Types: EPL Planned Purchases*.
 - 1.3.3 All EPL clients may make purchases from the EPL over the specified dollar limits only with prior approval from **ITS**.
 - 1.3.4 **ITS** clients are not required to use EPLs for their purchases.
- 1.4 It is a goal of the EPL to make list(s) of quality products in defined categories available to state customers from reputable sources at the best possible prices.
- 1.5 Pricing is a major concern of **ITS**. Therefore Vendors must submit their pricing structure comparable to national pricing trends, the GSA, other statewide contracts, or other prominent pricing benchmark in terms of volume discounts.
- 1.6 Submission of a proposal will not automatically qualify Vendor's products for placement on the Security Hardware and Software Express Products List. **ITS** performs an evaluation of hardware/software offerings before placing the lowest and best offerings on the published EPL.

- 1.7 Each EPL is unique to **ITS**, administered under **ITS** policies and procedures, and not to be construed to apply or operate in any other manner by either Vendors or governmental entities.
 - 1.8 It is the intent of **ITS** that an EPL is a multi-award list. However, **ITS** reserves the right to make a single award EPL.
 - 1.9 By submitting a proposal for consideration and inclusion in the EPL, a Vendor is professing a willingness to provide customer service to ANY customer from the State of Mississippi qualified to use the EPL. As a condition for remaining on the EPL, Vendor must be willing to support our customers with timely telephone responses to their calls for information regarding the products and pricing proposed by your company, including but not limited to timely provision of “written quotes.”
 - 1.10 Any Vendor violating EPL policy may be removed for one or more EPL cycles and a bond may be required with Vendor’s next proposal submittal.
2. **Right to Use Express Products List Proposals as General RFPs**
ITS uses EPL products in combination with General RFPs in many routine procurements. **ITS** reserves the right to use the Vendor’s EPL response in the same capacity as a General RFP. A General RFP is an unpublished collection of Vendors’ proposals for particular types of products or services used internally by **ITS** to solicit configurations and pricing through the Letter of Configuration (LOC) process on a project by project basis.
 3. **Price Changes During Award or Renewal Period**
All pricing proposed should be your best proposal pricing. These costs are not-to-exceed costs. Vendor is required to pass any price decreases on to the customer. Vendor is also encouraged to provide quantity discounts to customers on EPL offerings should large quantities be purchased from the EPL.
 4. **Restriction on Advertising**
The Vendor must receive written approval from the State before advertising or referencing the award of a contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi. The following guidelines pertain specifically to the use of Express Products Lists.
 - 4.1 Acceptable guidelines for marketing EPL products include:
 - 4.1.1 Vendor’s reference of any EPL should include a description of the EPL, the EPL RFP number, and the valid dates for that EPL. EPLs go out of date and **ITS** maintains several types of EPLs.

- 4.1.2 **ITS** recommends that you reference our website in any marketing publications or provide a link to our website from your website.
<http://www.its.ms.gov> .
- 4.1.3 Any description or interpretation of **ITS** EPL policy or reproduction of individual Vendor offerings should be an exact, current, and complete quotation with the source identified. Examples include the published EPL, the **ITS** procurement handbook, or the RFP number in question.
- 4.2 Unacceptable references of **ITS** EPLs include:
 - 4.2.1 Do not imply that your EPL products are exclusive in any way or that you are the only EPL award. Government clients must still evaluate your EPL offerings with others on the list to determine “lowest and best” qualification.
 - 4.2.2 The EPL is **NOT** a “State Contract” as used by the Department of Finance and Administration (DFA) Office of Purchase and Travel. Because the procedures for using DFA “State Contracts” differ from using **ITS** EPLs, we ask that you not use this terminology.
 - 4.2.3 Do not mix marketing of EPL products with non-EPL products as this may imply that those non-EPL products are also on the EPL.
- 5. **Minimum Legal Requirements**

It is the intent of **ITS** that the Master Purchase Agreement, which is a requirement of some EPLs, and the Terms and Conditions of this RFP provide the contractual basis for purchases made from the EPL, and that additional contracts among **ITS**, the Vendor, or the EPL customer will not prove necessary. However, should an EPL customer require a custom contract at the time of sale to define a particular project, additional appropriate terms and conditions needed on a project may be negotiated between the Vendor and EPL Customer. Vendor must be willing to include any or all of the requirements detailed in Section IV to any contract if required by **ITS**.
- 6. **Master Purchase Agreement**
 - 6.1 Due to the need for uniformity among EPL Vendors, a valid proposal for an EPL RFP must include an *Master Purchase Agreement* with **NO EXCEPTIONS**.
 - 6.2 After the proposal opening, **ITS** will send each awarded Vendor originals of the completed *Master Purchase Agreement* for the Vendor to sign and return. **ITS** will execute the contract and return a signed original to the Vendor.

- 6.3 The purchase order from any individual customer will serve as a supplement to this Agreement. Additional terms and conditions may be negotiated between the customer and Vendor at the time of sale, as needed.
- 6.4 American Recovery and Reinvestment Act (ARRA) of 2009
- 6.4.1 While ARRA requirements are still evolving and some current EPLs were established prior to the establishment of federal rules concerning the use of ARRA funds, to the best of our knowledge and current assessment, **ITS** believes the EPLs are valid purchase instrument for the use of ARRA funds.
- 6.4.2 **ITS** recommends that customers using these instruments for purchases using ARRA funds obtain written quotations from multiple EPL sellers, that the request for quotations state that ARRA funds will be used for the purchase, and that all quotations be maintained in the purchase file.
- 6.4.3 **ITS** recommends that the customers using this EPL for purchases using ARRA funds work with the Vendor to ensure that they have adequate contractual protection as recommended by the Mississippi Office of the State Auditor. To see recommended articles for consideration for inclusion in an ARRA contract, see “ARRA EPL Information for Stimulus Purchases” on the **ITS** website <http://www.its.ms.gov/EPL.shtml> or see the Department of Finance and Administration site, http://www.mmrs.state.ms.us/statewide_applications/Stimulus/index.shtml.
- 6.4.4 **ITS** has created two versions of the Master Purchase Agreement and sellers may elect to execute either contract. **ITS** recommends that sellers choose Exhibit B, that includes the ARRA terms and conditions.
- 6.4.4.1 Exhibit A – Master Purchase Agreement – Non-ARRA version.
- 6.4.4.2 Exhibit B – Master Purchase Agreement – ARRA version.
This purchase agreement is the same as Exhibit A with the following additions
- 6.4.4.2.1 New sub-article 9.12
- 6.4.4.2.2 Exhibit A

- 6.4.5 Each seller's record published on the **ITS** Security Hardware and Software EPL will have a field labeled "ARRA Participant" with either a "YES" or "NO" designation. The ARRA "YES" designation denotes that the seller has agreed to work with EPL customers to fulfill purchases that are funded by ARRA and that those sellers have signed the Master Purchase Agreement with the additional ARRA terms and conditions. The "NO" designation indicates that the seller has not agreed to participate in ARRA funded projects and has NOT signed the **ITS** Master Purchase Agreement with ARRA terms.

7. Substitutions

- 7.1 In general, substitutions are not authorized under RFP No. 3612.
- 7.2 If a product has been discontinued or it not available due to a national constraint, the Vendor is expected, within reason and in good faith, to offer an equivalent or better substitute at or below the original price, with the customer's permission. The offering being substituted must be from the same manufacturer as the approved EPL product being discontinued or that is unavailable.
- 7.3 **ITS EPL AUDIT INTEGRITY.** It is the responsibility of every customer using the EPL to maintain proper records to reflect that all procurements from the EPL are made in accordance with **ITS** policies and procedures. It is the responsibility of every participating EPL Vendor to facilitate the customer in this regard. The purchase order must match the EPL product numbers and descriptions unless there has been a substitution made in accordance with the published EPL guidelines. The purchase order price may be lower than, but may not exceed the published EPL pricing. Proper records would include written notes of the customer justification for making a desired Vendor/system selection including a comparison of EPL products considered. In the case of a substitution, the seller must provide a formal written explanation regarding the manner in which the component substitution complied with the corresponding EPL guidelines.
- 7.4 Products or services purchased in conjunction with EPL products that are not specifically described and authorized on the published EPL are "**Non-EPL Items**" and the authority for purchasing such items must come from public purchasing dollar limitations or other procurement tools. An item being substituted through the substitution policy outlined above is still considered an EPL item. Customer must keep a printed copy of the EPL page(s) showing the products being purchased in their documentation as well as the written explanation regarding the substitution. Non-EPL items should be listed as such on the purchase order or Vendor quotation to avoid confusion and for later audit purposes.

8. **Transition Between Cycles**

Vendor should recognize that the EPL procedure is cyclical. There may be interim periods between the expiration of an old EPL and the introduction of a new EPL or the issuance of corrections or updates to a working list. **ITS** must evaluate each cycle's new proposals before the new list can go into effect. Also, acquisition approvals already in process using old proposals must have time to be completed. Therefore, during these periods, Vendors should strive to honor all products and pricing on an active list.

9. **Publication, Clarification, Corrections**

9.1 The Security Hardware/Software EPL will be available on the **ITS** website. This includes:

9.1.1 Instructions for Use,

9.1.2 Master Purchase Agreement,

9.1.3 List(s) of approved security hardware/software, and their not-to-exceed EPL price, and

9.1.4 List(s) of the approved Vendors, their contacts, purchase order information, remittance information, and their service fees.

SECTION VIII TECHNICAL SPECIFICATIONS

1. How to Respond to this Section

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

2. General Overview and Background

- 2.1 The Mississippi Department of Information Technology Services is seeking proposals from qualified Vendors to provide security hardware and software products, and related installation and configuration services for the wide area, local area and other network based systems used by **ITS** and its customers (state agencies and entities). The objective of this RFP is to provide a tool for the acquisition of security hardware and software that will allow **ITS** and its

customers to incorporate their desired security measures within their network and systems infrastructure.

- 2.2 The Department of Information Technology Services (**ITS**) - Information Security Division has developed three RFPs to assist agencies and institutions with IT Security issues. **ITS** issued Request for Proposal (RFP) 3606 on behalf of the Information Security Division to establish a Vendor pool for the acquisition of security risk assessment services by agencies and institutions. RFP No. 3606 does not include the remediation work required to satisfy/resolve any audit findings. RFP No. 3610 provides a pool of qualified Vendors to assist agencies and institutions by providing the security consulting services required to resolve IT Security issues. RFP No. 3612 will provide for the acquisition of security hardware and software products.
- 2.3 **ITS** will evaluate the proposals from this RFP, placing competitive offerings on the Security Hardware and Software Express Products List. The EPL is a published list, which provides **ITS** EPL clients an economical, flexible mechanism to acquire this technology in full compliance with all purchasing requirements. **ITS** customers obtain the Security Hardware/Software EPL from the **ITS** Web Site or by requesting a copy. They are able to place their purchase orders directly with EPL Vendors after performing their own comparative evaluation.
- 2.4 There will be no sole winning Vendor in response to this RFP. All responses will be evaluated and rated based on completeness of response, the degree and type of security hardware/software experience, and Vendor's concurrence with the requirements of this RFP. Successful Vendors will be maintained on a list and will be eligible to participate in a competitive process on a project-by-project basis. Awards may be made to valid Vendors multiple times using these procedures.
- 2.5 The dollar limitation for the Security Hardware/Software EPL is anticipated to be \$100,000.00 per project.
- 2.6 For projects that exceed the scope or dollar limitation for the Security Hardware/Software EPL, **ITS** will use the LOC process outlined in Section VII, Item 2. Throughout the lifecycle of this RFP, **ITS** consultants will reference the list of Vendors approved to participate in the Security Hardware and Software EPL and will send out a Letter of Configuration (LOC) requesting more detailed information on the requested products and services. In response to such a request, the Vendor submits specific pricing information, and other project-specific information, based on Vendor's proposal and not-to-exceed pricing submitted in response to this RFP.

3. Statements of Understanding

- 3.1 Due to the sensitivity of systems security information that will be available through the installation of security hardware/software products, the Vendor must describe the background verification process used in the hiring of their management staff and their individual consultants.
- 3.2 Each awarded Vendor will be required to sign a Confidentiality Agreement (Exhibit C) with ITS. In addition, the EPL Customer may require a separate Confidentiality Agreement with the Vendor.

4. Procurement Project Schedule

Task	Date
First Advertisement Date for RFP	06/15/2010
Second Advertisement Date for RFP	06/22/2010
Deadline for Vendor's Written Questions	3:00 p.m. Central Time on 07/06/2010
Deadline for Questions Answered and Posted to ITS Web Site	07/12/2010
Open Proposals	07/19/2010
Evaluation of Proposals	7/19/2010 – 7/30/2010
Contract Negotiation	8/2/2010 – 8/20/2010

5. Security Hardware and Software Products

- 5.1 The Hardware and Software Express Products Request for Proposal allows Vendors to propose products in the following categories:
- 5.1.1 Firewall Products
 - 5.1.2 Intrusion Detection Systems
 - 5.1.3 Intrusion Prevention/Monitoring Systems
 - 5.1.4 Email and Web Security Products
 - 5.1.5 Data Security and Encryption Products
 - 5.1.6 Host-based Security Products
 - 5.1.7 Security Management Systems
 - 5.1.8 Security/Risk Assessment Products

- 5.1.9 Application Security Assessment Products
- 5.1.10 Authentication Products
- 5.1.11 Data Loss Prevention Products
- 5.2 **ITS** issued RFP Number 3606, Security Risk Assessment Services, on October 29, 2009, to establish a Vendor pool for the acquisition of Security Risk Assessment Services by agencies and institutions of the State of Mississippi.
 - 5.2.1 Vendors who are members of the Vendor pool for RFP Number 3606, Security Risk Assessment Services, will not be allowed to sell security hardware and software to an agency within the scope of a security assessment that Vendor is providing for a given agency.
- 5.3 **ITS** issued RFP Number 3610, Security Consulting Services, on January 26, 2010, to establish a Vendor pool for the acquisition of Consulting Services by agencies and institutions of the State of Mississippi.
- 5.4 Vendors must propose only security-related hardware and software products and related services in response to this RFP. **ITS** reserves the right to remove products or services from a Vendor's proposal that are deemed to be out of scope and do not meet the intentions of this RFP.
- 5.5 Vendors may not propose software covered by existing statewide contracts which include the volume license agreements covered by the Software EPL 3594 as well as Microsoft Select EPL 3533. A link to both EPLs can be found at <http://www.its.ms.gov/EPL.shtml>. These EPLs only cover software from the named manufacturers. Vendors may propose hardware devices from these manufacturers with or without bundled software. Vendors should review each EPL to gain a better understanding of the scope of products covered.
 - 5.5.1 The Software EPL 3594 includes products by the following manufacturers: Adobe, Citrix, Corel, IBM-Lotus Passport, McAfee, Novell, Symantec and other desktop utility software, Attachmate, Autodesk, SAP Business Objects (Crystal Reports/Decisions), Computer Associates, EMC (NetWorker, Homebase, Replistor Software), Hummingbird, Quest, Sophos, Trend Micro.
 - 5.5.2 The Microsoft Select EPL 3533 covers products offered via the Microsoft Select Master Agreement for both government and education, Microsoft Enterprise Agreement, Microsoft Campus

Agreement, Microsoft School Agreement, and Microsoft Open License Program.

- 5.6 The State reserves the right to give additional consideration to Vendors that are able to propose a wide array of the products requested. In addition, the State requires that Vendors not only sell the equipment but also possess the resources to work with customers and provide them with security solutions that fit across their entire infrastructure.
- 5.7 Vendor must list all products that his company provides for each category using the spreadsheet provided for download as described in Section IX: *Cost Information Submission*. Vendor must provide the Product Name/Description, Category, Manufacturer Number, Manufacturer, License Type, List Price, Discount Percentage, and Cost to State for each product that his company is able to provide.
- 5.7.1 Vendors may propose any number of manufacturers' products in response to this RFP, but Vendors are limited to 300 lines within the spreadsheet for providing ALL product options including warranty information for associated products.
- 5.7.2 Vendors must include verification/certification from the manufacturer that their company is authorized to sell, install, and service the proposed products. The Vendor must provide their company's information as it relates to their standing agreement with any of the proposed manufacturers. That information must include: company name, address, prime contact, telephone number and their respective level of certification and/or service level with that manufacturer.
- 5.8 Current Marketing Report Requirement
Section XI of this RFP outlines sales reporting requirements for Vendors whose products are accepted on the EPL.
- 5.9 The Vendor must propose new equipment that is scalable in design to support both current and emerging technologies. Equipment near end-of-life (EOL) will not be accepted.
- 5.10 After market, refurbished, or OEM products will not be accepted.
- 5.11 Vendor products that are manufactured on blades or modules that integrate into host network devices or appliances may be proposed as part of this RFP, but the associated host network device or appliance is not included in the scope of this RFP.
- 5.12 There is no guarantee of volume through the life of this contract.

5.13 Installation Service Requirements

- 5.13.1 Pre-installation meetings with the customer, if required
- 5.13.2 Configuration of the equipment (including review of release notes, caveats and bug reports to ensure compatibility and functionality of hardware and software)
- 5.13.3 Coordination with the customer staff concerning schedules
- 5.13.4 Physical installation, testing, and acceptance
- 5.13.5 Vendor must identify any and all cost associated with these services.

5.14 General Warranty Requirements

- 5.14.1 Vendor must provide the standard manufacturer warranty options available for hardware and software proposed.
- 5.14.2 Vendors may also propose the upgrades available for each warranty.

6. **Additional Requirements**

6.1 Request for Quote/Statement of Work

- 6.1.1 Vendor must acknowledge that a well-organized Statement of Work that clearly identifies all components being proposed as well as all related services that will be provided for each project awarded from this RFP. The Statement of Work should include, at minimum, the following components.
 - 6.1.1.1 Complete listing of all hardware and software being proposed.
 - 6.1.1.2 If applicable, scope of work including listing of responsibilities and accountable parties (vendor, State, other).
 - 6.1.1.3 A schedule/timetable for the entire project.
 - 6.1.1.4 An itemized description of the total cost of the project based on the pricing proposed in this RFP.

7. Vendor Qualifications for all Sellers

- 7.1 Sellers must meet Value-added Vendor requirements. Describe in your response how your company fulfills these qualifications.
- 7.2 Value-added Vendor
 - 7.2.1 *Value-added Vendors* are those who can address a customer's needs for delivery, installation, custom integration, training, consulting, and "hand holding" with in-house staff and same or next-day on-site support to the degree required by their Mississippi customers. *Value-added Vendors* have directly invested in staff, training resources, and physical facilities logistically available to Mississippi EPL Customers. These are the Vendors who possess established in-house resources to provide integration across a diverse spectrum of technology such as LANs, WANs, Internet, multimedia applications, computer-aided/assisted courseware, and administrative applications.
 - 7.2.2 *Value-added Vendors* are those prime parties who are capable of providing the on-site warranty service directly and coordinate these services between the customer and the manufacturer to the degree that the process to activate the on-site service call is transparent to the customer. Therefore the customers will not have to fend for themselves with remote 1-800 support.
 - 7.2.3 Value-added Vendors must have an office or service center within 200 miles of a Mississippi border in order to be considered "logistically available to Mississippi EPL Customers." "Virtual" or "Home" offices do not meet this standard.
- 7.3 **ITS** reserves the right to make the final, sole determination of Value-added status. References may be used in the determination of Vendor qualification.
- 7.4 Vendor Fees
 - 7.4.1 Value-added Vendors are required to propose all appropriate service fees for this EPL in order to be awarded Value-added status. Failure to submit a response to the service fees will disqualify your proposal.
 - 7.4.2 All service rates are not-to-exceed prices and may be lowered but not raised during the EPL one year term.

- 7.4.3 Services fees will be proposed in spreadsheet format as defined in Section IX, *Cost Information Submission*. **ITS** is soliciting and will publish these four (4) rates.
- 7.4.3.1 Hourly Rate for basic installation services
 - 7.4.3.2 Hourly Rate for project manager/engineer/advanced technician
 - 7.4.3.3 Hourly Rate for travel
 - 7.4.3.4 Hourly Rate for training
- 7.4.4 The Security Hardware/Software EPL is NOT a services RFP nor may any of these service fees be used for warranty work. It is the intent of **ITS** that service fees are to be used in conjunction with the initial installation and configuration of equipment purchased from this RFP.
- 7.4.4.1 The use of the Security Hardware/Software EPL Service Fee as the procurement authority for ongoing maintenance support or for consulting services is prohibited. This EPL does not provide procurement authority for using the service rates after the initial purchase and installation.
 - 7.4.4.2 **ITS** encourages the Vendors to propose additional enhanced warranty options as part of their EPL proposal. Sellers are encouraged to discuss these extended warranties with their customers.
- 7.4.5 Seller should propose hourly rates based upon standard business hours of 8 x 5, Monday – Friday, excluding holidays. Should customers have needs for after hours services, Seller may optionally charge up to one and one-half (1 ½) times their service rate, provided Seller has supplied a written estimate and advised the customer of the after-hours charge.
- 7.4.6 The Travel Hourly Rate covers the time and cost of travel within state boundaries. This rate may not be used on out-of-state travel.
- 7.4.6.1 Any Travel Hourly Rate may not exceed the Seller's highest hourly rate proposed.
 - 7.4.6.2 For Vendors with multiple service center locations, **ITS** expects a good faith effort on the part of any Vendor to

tailor the customer service needs with the lowest costs and expenses possible.

7.4.7 Vendor must provide to the customer at the time of sale a not-to-exceed estimate of installation and any travel fees to be used in conjunction with services. Travel fees are negotiated between the Vendor and customer and should include the following considerations:

7.4.7.1 Is the estimate for one-way or two-way travel?

7.4.7.2 Is the estimate per technician or per vehicle?

7.4.7.3 If there is a need for extended on-site work involving per diem charges for meals, mileage, hotels, airfare, etc., customer would authorize these charges through other public purchasing procedures. They are not authorized under this EPL.

7.5 Vendor is solely responsible for all delivery and implementation subject to formal customer acceptance. **ITS** does not encourage the use of subcontractors. Any use thereof must be transparent to the customer with all transactions and payment conducted directly with the Security Hardware/Software EPL Vendor. Any sub-contractors must be named in Section X and responding Vendor must provide references for those sub-contractors. Should a Vendor need to add additional sub-contractors during the term of the EPL, they must submit those names and references to **ITS** EPL Team for approval.

7.6 The Master Purchase Agreement provides in Articles 7.7 and 7.8 for circumstances when the customer may test and evaluate the purchased product to ensure it is not defective and that it performs to the specifications published in the EPL. The Master Purchase Agreement does not provide for “buyer’s remorse,” where the customer may send back a product because the customer has changed his mind or wants something else. If the delivered product is defective, the customer may return the product if the Vendor is notified within the ten (10) working day acceptance period. It would be at the Vendor’s discretion whether to accept a return for non-defective equipment and whether to charge the customer a “re-stocking” fee in order to take back unwanted products. The customer assumes responsibility for all “re-stocking” fees in this instance as a condition for using the EPL.

8. **Company Profile for Sellers**

8.1 The Vendor must provide details of experience in the installation and support of security hardware and software for at least one project completed over the

past five years for each of the security hardware/software categories that the Vendor offers in Section IX, *Cost Information Submission*. At minimum, these details must include customer company name, location, project description, project timeframe, and number of months/years of experience in each project area.

- 8.2 It is desirable that the Vendor have state and/or other governmental experience. Identify any of the projects listed above where the client was a state or other governmental organization.
- 8.3 Vendor should respond to this section in relation to how Vendor can serve **ITS'** Mississippi government clients. **ITS** is not interested in volumes of annual reports or marketing brochures that generalize Vendor national services. We want to know how Vendor proposes to serve Mississippi clients.
 - 8.3.1 How many years has Vendor's company been in business? Vendor's company must have been in business a minimum of two years.
 - 8.3.2 Provide background details on the company including:
 - 8.3.2.1 Ownership information,
 - 8.3.2.2 Date established,
 - 8.3.2.3 State of Incorporation,
 - 8.3.2.4 Total number of employees, and
 - 8.3.2.5 Changes in control.
 - 8.3.3 Describe Vendor's sales staff and staffing for project management.
 - 8.3.4 Describe Vendor's process for:
 - 8.3.4.1 Handling sales and quotation requests;
 - 8.3.4.2 Tracking the delivery of products;
 - 8.3.4.3 Installation; and
 - 8.3.4.4 Billing
 - 8.3.5 Does Vendor have a store front/service center(s) to serve Mississippi clients?

8.3.5.1 Describe the location, providing street address, approximate square footage, etc.

8.3.5.2 List the offices that will be used to provide installation and on-site support.

8.3.5.3 Differentiate company facilities from any “virtual office” or home office.

8.3.6 Under what conditions would third-party support be used in lieu of in-house staff?

8.3.7 Describe response time for initial call response, on-site personnel response, and resolution. Include average time as well as a not-to-exceed time frame for each type of response.

8.3.8 List any manufacturer certifications held by Vendor’s company as a whole. Please provide a copy of the manufacturer certifications for your company.

8.3.9 Describe any “Value-Adds” that your company would provide if awarded under this RFP.

8.4 Financial

8.4.1 Vendor must provide most recent annual report or current audited financial statements, which must include a letter from a CPA or accounting firm indicating that the financial records have been reviewed. Failure to provide this information may eliminate your proposal from further consideration. At a minimum, the report should include assets / liabilities and an income / revenue report.

8.4.2 Financial Viability
Does Vendor certify that it has credit from its major supplier, banker, and/or other guarantor(s) to cover projects up to the planned dollar approval limit of the EPL of \$100,000? (A yes or no answer is required.)

In cases where there are state customer problems during the RFP cycle due to Vendor inability to finance purchases, **ITS** reserves the right to take corrective action, up to and including disqualification from participation in the RFP process.

9. **Staff Qualifications**

9.1 Vendor must identify the engineering/technical personnel who will be available to provide security installation and configuration services. Resumes

of engineering/technical personnel should include details regarding experience with the specific products proposed by the Vendor in response to this RFP. Vendor must provide copies of relevant certifications and/or security clearance/classifications possessed by the proposed staff.

9.2 Vendor must designate a single point-of-contact and backup for routine communications under this contract.

9.3 Vendors must provide the same information as above for each subcontractor whom the Vendor proposes to perform any of the functions under this RFP.

10. Proposal Validation, Use, and Updates

10.1 At times to be set at the discretion of **ITS**, an update may be requested from all participating Vendors. At such a scheduled update, Vendors will be requested to update their contact information, if needed, and will be allowed to make any needed changes or additions to their proposed information including pricing.

10.2 This RFP will be used for a one-year term with the option to renew the resulting contract as needs evolve. At the end of the initial term, the contract may be extended, upon the written consent of the parties, the length of which will be agreed upon by the parties.

10.3 **ITS** reserves the right to also use the awarded proposals as the basis for satisfying additional requests that may originate from agencies and institutions under **ITS** purview, via the Letter of Configuration process outlined in Section VII, Item 2.

11. Cost Proposal

11.1 Vendors must provide detailed and comprehensive itemized pricing based on the requirements listed within this RFP and the information described in Section IX: *Cost Information Submission*.

12. Proposal Evaluation Methodology

12.1 An Evaluation Team composed primarily of **ITS** personnel will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals. The Evaluation Team will use categories to score all proposals based on the following:

12.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

- 12.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.
- 12.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.
- 12.1.4 For evaluation of RFP 3612, the evaluation team will use the following categories and possible points:

Category	Possible Points
Non-Cost Categories:	
Vendor and Staff Qualifications /Experience	40
Compliance with RFP	10
Total Non-Cost Points	50
Cost	50
Total Base Points	100
Value Add	5
Maximum Possible Points	105

- 12.2 The evaluation will be conducted in four stages as follows:

12.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, and timely delivery. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

- 12.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

12.2.2.1 Non-cost categories and possible point values are as follows:

Non-Cost Categories	Possible Points
Vendor Qualifications/Experience	10 Points
Value Added Vendor	30 Points
Compliance with RFP	10 Points
Maximum Possible Points	50 Points

12.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

12.2.3 Stage 3 – Cost Evaluation

12.2.3.1 Points will assigned using the following formula:

$$(1 - ((B - A) / A)) * n$$

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for this acquisition

12.2.3.2 Cost categories and maximum point values are as follows:

Cost Category	Possible Points
Lifecycle Cost	40 Points
Discount % off List	10 Points
Maximum Possible Points	50 Points

12.2.4 Stage 4 – Selection of the successful Vendor

12.2.4.1 Optional Oral Presentation - At the State's option, Vendors remaining in a competitive posture near the end of the evaluation may be requested to make an oral presentation. This presentation must be in person in Jackson, Mississippi at the Vendor's expense and conducted within seven (7) calendar days of notification. The presentation must be made by the Vendor's proposed project principal. The presentation is intended to give the State an opportunity to become acquainted with the Vendor's project principal, receive a first-hand understanding of the proposal and engage in a question and answer session.

12.2.4.2 Final Quantitative Evaluation - Following any requested presentations, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

SECTION IX COST INFORMATION SUBMISSION

1. Instructions for completing Section IX, Cost Information Submission

- 1.1. The Cost Information Submission is provided for download from the ITS website at <http://www.its.ms.gove/rfps/3612.shtml>.
- 1.2. Vendors MUST download the file “3612_CostInformationSubmission.xls” and complete the spreadsheet.
- 1.3. Vendors are limited to 300 lines within the spreadsheet for providing ALL product options including warranty information for associated products.
- 1.4. The spreadsheet provides 3 separate worksheets for Vendors to provide Product Information, Service Fees, and Contact Information. Vendor must print all 3 tabs and provide a printed copy with proposal submission.
- 1.5. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification.

2. Directions for Submitting RFP Electronic Files

- 2.1. Information must be submitted in spreadsheet format. Do not use tables from word processing applications. Acceptable file types are listed below.
 - 2.1.1. Microsoft Excel
- 2.2. CD or diskette must be labeled with Vendor name and RFP No. 3612.
- 2.3. Vendor must include a hard paper copy of each spreadsheet.

3. Overview of Cost Information Submission

3.1. Product Information

The following items provide a definition or description of what information is expected for each column of the *Cost Information Submission*.

3.1.1. Product Name/Description

Commercial name for the product along with a short description.

3.1.2. CAT

For each product offering, the Vendor must indicate how the product should be categorized by indicating the appropriate category number in the “CAT” column. A product may fall into more than one category. The categories and their assigned numbers are as follows:

- 1-Firewall Products
- 2-Intrusion Detection Systems
- 3-Intrusion Prevention/Monitoring Systems
- 4-Email and Web Security Products
- 5-Data Security and Encryption Products
- 6-Host Based Security Products

- 7-Security Management Systems
- 8-Security/Risk Assessment Products
- 9-Application Security Assessment Products
- 10-Authentication Products
- 11-Data Loss Prevention Products

3.1.3. MFG#

Unique identification number assigned by manufacturer to identify a specific product.

3.1.4. Manufacturer

Name of manufacturer for the product being proposed.

3.1.5. License Type

For software products, the Vendor must use this column to indicate the License Type for the particular product; i.e., perpetual, subscription, enterprise, or named seat. If the product offers tier pricing, the Vendor may use the "License Type" column to indicate the tier levels available. If not a software product, leave this cell blank.

3.1.6. List Price

List Price of the product being offered.

3.1.7. Discount Percentage

Vendor's discount to the State.

3.1.8. Cost to State

List Price minus the Discount.

3.2. Service Fees

The Vendor must propose service fees as defined in Section VIII, item 7.4.3.

3.2.1. Mail-order Vendors are not accepted under RFP 3612.

3.2.2. All Vendors seeking the designation of "Value-added Vendor" MUST propose service fees.

3.3. Contact Information

The Vendor must provide the information requested.

SECTION X REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

1. References

- 1.1 The Vendor must provide at least 3 references consisting of Vendor accounts that the State may contact. Required information includes name, address, telephone number, and length of time the account has been a reference. Forms for providing reference information are included on the next page. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession. Failure to provide this information in the manner described may subject the Vendor's proposal to being rated unfavorably relative to these criteria or disqualified altogether at the State's sole discretion.
- 1.2 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
 - 1.2.1 The reference installations must indicate the Vendor's knowledge and depth of experience in the installation and support of security hardware/software, as described in Section VIII, Item 8 *Company Profile for Sellers*;
 - 1.2.2 The reference installations must collectively support all functions/expertise Vendor is proposing; and
 - 1.2.3 Vendor may be given extra consideration for government references.

2. Subcontractors

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and 3 references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section. The Vendor must note that the same requirements found in the References section apply to subcontractors.

REFERENCE FORM

Complete 3 Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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SUBCONTRACTOR REFERENCE FORM

Complete a separate form for each subcontractor proposed.

Contact Name:
Company name:
Address:
Phone #:
E-Mail:

Scope of services/products to be provided by subcontractor:

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Complete 3 Reference Forms for each Subcontractor.

Contact Name:
Company name:
Address:
Phone #:
E-Mail:
Description of product/services/project, including start and end dates:

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SECTION XI MARKETING REPORT

1. Vendors whose products are awarded under the Security Hardware/Software EPL **MUST** maintain a record of sales reported on an annual basis to **ITS**. Marketing Reports are due fifteen (15) days after the RFP expires. Should this EPL be extended for an additional period of time, a record of Security Hardware/Software EPL sales must also be reported for the extension period.
2. The following table shows an example of an acceptable marketing report.

Date	Client	Purchase Order Summary	Total
01/05/2010	Public Safety	XYZ Firewall Product	\$24,995.00
01/15/2010	Aberdeen School District	ABC Intrusion Product	\$130,000.00
01/23/2010	Jones Junior College	XYZ Email/Web Security Product	\$15,000.00
		Total	\$169,995.00

3. No Sales. If there were no sales during a reporting period, the Vendor must submit a Marketing Report showing no sales.
4. Failure to provide this sales information will be cause to be terminated from the EPL and to be disqualified from evaluation in future EPL cycles.
5. **ITS** reserves the right to request more detailed sales information on an individual basis.
6. **ITS** may compile the individual reports into a Summary Marketing Report. The Summary Marketing report will not show individual client names, only total sales from each Vendor. The Summary Marketing Report will become the property of **ITS** with the right to publish, reproduce or distribute without notification. Vendor's submission of a response to this RFP will constitute acceptance of this policy. Vendors may request a copy of this report under the **ITS** Open Records Procedure.
7. Any requests other than the Summary Marketing Report for copies of an individual Vendor's marketing report or any other information that is part of the Vendor's proposal will fall under **ITS** Open Records Procedure as defined in the **ITS** Procurement Handbook.

ITS staff places a high value on this historical information. We acknowledge the effort entailed in compiling this information and offer our appreciation in advance.

**EXHIBIT A
STANDARD CONTRACT
Non-ARRA Version**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with ITS.

Due to the need for uniformity among EPL Vendors, the terms of the Master Purchase Agreement are non-negotiable.

**MASTER PURCHASE AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI**

This Master Purchase Agreement (hereinafter referred to as “Master Agreement”) is entered into by and between INSERT VENDOR NAME a INSERT STATE OF INCORPORATION corporation having its principal offices at INSERT VENDOR STREET ADDRESS (hereinafter referred to as “Seller”) and the Mississippi Department of Information Technology Services, having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as “ITS”), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as “Purchaser”). ITS and Purchaser are sometimes collectively referred to herein as “State.”

WHEREAS, ITS, pursuant to Request for Proposals (“RFP”) Number 3612 requested proposals for the acquisition of a master contract containing the terms and conditions which will govern any orders placed by Purchaser during the term of this Master Agreement for security related hardware and software (hereinafter referred to as “Products”); and

WHEREAS, the Seller was one of the successful respondents in an open, fair and competitive procurement process to provide the above mentioned Services;

NOW THEREFORE, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all parties (the “Effective Date”) and will continue in effect for one (1) year thereafter, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last (hereinafter referred to as “Initial Term”). At the end of the Initial Term, the Master Agreement may, upon the written agreement of ITS and Seller, be renewed for an additional

term, the length of which will be agreed upon by the parties. Seller will notify ITS sixty (60) days in advance prior to the expiration of the Initial Term or any renewal term and ITS shall have thirty (30) days in which to notify Seller of its intention to either renew or cancel this Master Agreement.

ARTICLE 2 DEFINITIONS

The following terms as used herein shall have the following meanings:

2.1 “Purchase Order” means the document pursuant to which, among other things, Purchaser orders the Products from Seller.

2.2 “Purchaser” means, in each instance, the governmental agency, educational institution or other governing authority of the state of Mississippi who procures security related Products from Seller pursuant to this Master Agreement, and who shall be bound by the terms and conditions of this Master Agreement.

2.3 “Seller” means **INSERT VENDOR NAME** and its successors and assigns.

ARTICLE 3 MODIFICATION OR RENEGOTIATION

This Master Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Master Agreement in the event that federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement necessary.

ARTICLE 4 INCLUDED PARTIES AND PRICING

Seller will accept orders from and furnish the Products under this Master Agreement to Purchasers in line with ITS policies and procedures, at prices not to exceed those prices specified in the published Express Products List (“EPL”). At the end of the Initial Term of this Master Agreement, ITS and Seller may mutually agree in writing to modify, amend or replace the pricing specified in the published EPL.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will purchase any certain amount under this Master Agreement.

5.2 When a Purchaser decides to procure any Products from Seller, the Purchaser, after following applicable state procurement rules and regulations, may issue a Purchase Order to Seller. The Purchase Order shall reference this Master Agreement and shall set forth the Products to be procured; the prices for same; any warranty period; the specific details of the transaction, the Purchaser’s designated contact, and any additional terms and conditions that apply to the specific Purchase Order as agreed to in writing by the parties. Any additional terms and conditions contained in any Purchase Order shall apply solely to the Products being procured therein. All Purchase Orders shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a Purchase Order, in the event of a conflict between the other terms and conditions in a Purchase Order and this Master Agreement, the terms and conditions of this Master Agreement

shall prevail. The parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

5.3 Seller guarantees pricing for the Initial Term of this Master Agreement. In the event Seller announces or implements a national price decrease for the Products bid during that time, Seller agrees to extend the new, lower pricing to Purchaser.

ARTICLE 6 METHOD AND TIME OF PAYMENT

6.1 Once the Products have been accepted by Purchaser as prescribed in Article 7 herein or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation electronically to Purchaser during the term of this Master Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Seller understands and agrees that Purchaser is exempt from the payment of taxes. Payments by state agencies using the Statewide Automated Accounting System (“SAAS”) shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller’s choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled “Entire Agreement”.

6.2 If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser’s receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

6.3 Acceptance by Seller of the last payment from the Purchaser under a Purchase Order shall operate as a release of all claims for payment against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a Purchase Order.

ARTICLE 7 DELIVERY, RISK OF LOSS, INSTALLATION, AND ACCEPTANCE

7.1 Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by the parties.

7.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

7.3 If installation by Seller is required, Seller shall complete installation of the Products

pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 3612. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

7.4 If installation by Seller is required, Seller shall be responsible for installing all Products and materials in accordance with all state, federal and industry standards for such items.

7.5 If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the Seller and Purchaser. Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation.

7.6 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

7.7 Unless a different acceptance period is agreed upon by the Purchaser and Seller, Purchaser shall accept or reject the Products provided by Seller after a ten (10) working day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to the specifications set forth in RFP No. 3612. Purchaser shall notify Seller in writing of its acceptance of the Products.

7.8 In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller is unable to correct the defects or replace the defective Product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel the Purchase Order, and to cancel this Master Agreement as to itself only.

7.9 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.7 herein, in which to reevaluate/retest such Product.

7.10 If, after Seller has tendered to Purchaser Seller's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including either (i) notifying Seller that it has elected to keep the Product despite such defects; (ii) returning the Product to Seller and providing Seller with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Seller at Seller's expense and canceling the Purchase Order. If the Purchaser returns the Product pursuant to clause (iii) herein, Purchaser may also pursue any remedy available to it in law or in equity.

ARTICLE 8 WARRANTIES

8.1 Seller represents and warrants that the Products provided by Seller to Purchaser shall meet or exceed the minimum specifications set forth in RFP No. 3612 and Seller's Proposal in response thereto.

8.2 Seller represents and warrants that it has the right to sell the Products provided under this Master Agreement.

8.3 Seller represents and warrants that Purchaser shall acquire good and clear title to the hardware Products purchased hereunder, free and clear of all liens and encumbrances.

8.4 Seller represents and warrants that each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

8.5 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the manufacturer/licensor of the Product.

8.6 Unless a longer warranty period is specified in the Purchase Order, Seller represents and warrants that all hardware Products provided pursuant to this Master Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after acceptance. Seller's obligation pursuant to this warranty shall include, but is not limited to, the repair or replacement of the hardware Product, or the redoing of the faulty installation, at no cost to Purchaser. In the event Seller can not repair or replace the hardware Product during the warranty period within ten (10) working days after receipt of notice of the defect, Seller shall refund the purchase price of the hardware Product and refund any fees paid for services that directly relate to the defective hardware Product, and Purchaser shall have the right to terminate the Purchase Order and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

8.7 Unless a longer warranty period is specified in the Purchase Order, Seller represents and warrants that all software Products provided pursuant to this Master Agreement shall be free from material defects and provide Purchaser complete functionality as stated in RFP No. 3612 and Seller's Proposal in response thereto for a period of ninety (90) days after acceptance. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the software Product at the expense of Seller. In the event Seller is unable to repair or replace the software Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of the fees paid and shall have the right to terminate the Purchase Order and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

8.8 Seller represents and warrants that all work hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the

requirements of this Master Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the services, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

8.9 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

8.10 Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of any virus, and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

8.11 Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of the Purchase Order and this Master Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

8.12 Seller represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in the Purchase Order.

8.13 The Seller represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Master Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Master Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this Master Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Master Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Master Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

8.14 Seller represents and warrants that neither the Products, replacement parts, their elements nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Purchaser shall notify Seller promptly of any infringement claim of which it has knowledge, and shall cooperate with Seller in the defense of such claim, all at Seller's expense. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this Master Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against Purchaser. If the continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using the Products, or upon failing to procure such right; (b) replace or modify the Product or components thereof with non-infringing Products so it becomes non-infringing while maintaining substantially similar functionality, or upon failing to secure either such right, (c) refund to Purchaser the hardware purchase price or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

ARTICLE 9 TITLE TO EQUIPMENT

Title to the hardware Products provided under this Master Agreement shall pass to Purchaser upon its acceptance of the hardware Product.

ARTICLE 10 SOFTWARE

10.1 Seller shall furnish the software to Purchaser as set forth in Purchase Orders and shall acquire the right to license the software to Purchaser. For purposes of this Article, the term "Purchaser" means the governmental agency, educational institution or other governing authority within the State of Mississippi submitting the Purchase Order, its employees and any third party

consultants or outsourcers engaged by Purchaser who have a need to know, and who shall be bound by the terms and conditions of this license and Master Agreement.

10.2 Seller accepts sole responsibility for (a) Purchaser's system configuration, design and requirements; (b) the selection of the software to achieve Purchaser's intended results; (c) the results obtained from the software, and (d) modifications, changes or alterations to the software provided by Seller.

10.3 Seller understands and agrees that Purchaser shall have: (a) a non-exclusive, non-transferable, enterprise-wide unlimited and perpetual license (unless specified as a term license in the Purchase Order) for the software provided pursuant a Purchase Order; (b) the right to use and customize the software products and the related documentation for Purchaser's business operations and in accordance with the terms and conditions of this Master Agreement; (c) unlimited use by licensed users of the software products acquired for Purchaser's operations; (d) use of such software products with a backup platform system should it be deemed necessary by Purchaser; (e) the right to copy such software for safekeeping, backup and disaster recovery purposes; (f) the right to combine the software with other programs and modules, and the right to create interfaces to other programs, and (g) the right to reproduce any and all physical documentation supplied under the terms of this Master Agreement.

10.4 Purchaser agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the software without the prior written consent of Seller. All title and proprietary rights, whether tangible or intangible, including but not limited to, copyright, trademark and trade secret rights, in and to the software are retained by the Seller or the third party software manufacturer as applicable. Purchaser agrees to reproduce and include the copyright, trademark and other proprietary rights notices on any copies made of the software and documentation.

ARTICLE 11 EMPLOYMENT STATUS

11.1 Seller shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship, partnership, agency, or joint venture relationship.

11.2 Seller represents that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties identified in a Purchase Order. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave benefits.

11.3 Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees performing services under this Master Agreement.

ARTICLE 12 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any Seller employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of Purchaser's staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations shall be covered by Seller's comprehensive general liability insurance policy.

ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

13.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for any given Purchaser project. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

13.2 Seller may not assign or otherwise transfer the Purchase Order or this Master Agreement or its obligations hereunder without the prior written consent of ITS and Purchaser, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The Purchase Order and this Master Agreement shall be binding upon the parties' respective successors and assigns.

13.3 Seller must obtain the written approval of Purchaser before subcontracting any portion of the Purchase Order and this Master Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in the Purchase Order. All subcontracts shall incorporate the terms of the applicable Purchase Order and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

13.4 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Seller is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Seller. Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

13.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Seller and the Purchaser, where such dispute affects the subcontract.

ARTICLE 14 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Master Agreement and the Purchase Order is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Master Agreement. It is understood that Purchaser will not issue a Purchase Order unless the Purchaser has committed funding for such Purchase Order. If the funds anticipated for the fulfillment of this Master Agreement and the Purchase Order are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Master Agreement, Purchaser shall have the right to immediately terminate the Purchase Order and this Master Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under the Purchase Order and this Master Agreement. In the event of termination due to unavailability of funds, Seller shall be paid for services rendered by Seller in connection with this Master Agreement and accepted by Purchaser prior to the date of receipt of notification of termination.

ARTICLE 15 TERMINATION

15.1 Termination Upon Mutual Agreement: A Purchase Order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

15.2 Termination Due To Bankruptcy: Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty (30) days prior written notice, terminate a Purchase Order and this Master Agreement without the assessment of penalties, solely as between those two parties.

15.3 Termination Other Than For Cause: A Purchaser may terminate a Purchase Order and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Seller.

15.4 Termination For Cause: If Purchaser or Seller fail to comply with the terms and conditions of the Purchase Order or this Master Agreement, either Purchaser or Seller may terminate the Purchase Order and this Master Agreement solely as between those two entities and without the assessment of any penalties, upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar day period, or such other cure period as may be mutually agreed upon by Seller and Purchaser. Provided that, if the Purchaser terminates a Purchase Order and this Master Agreement solely as between those two entities because of Seller's inability to cure material defects after notice and opportunity to cure, the Purchaser may terminate the Purchase Order and this Master Agreement solely as between those two entities without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

15.5 Termination of Master Agreement: ITS may terminate this Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller but any Purchase Order entered into prior to the termination date of this Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Purchase Orders.

15.6 Upon termination of a Purchase Order, Seller shall refund any and all applicable unexpended pro-rated maintenance/service fees previously paid by the Purchaser. Further, in the event a Purchase Order is terminated, Seller shall be paid for work completed by Seller and accepted by Purchaser prior to the termination. Such compensation shall be based upon and shall not exceed the amounts set forth in the particular Purchase Order.

ARTICLE 16 GOVERNING LAW

This Master Agreement and each Purchase Order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Master Agreement shall affect any statutory rights Seller and Purchaser may have that cannot be waived or limited by contract.

ARTICLE 17 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

ARTICLE 18 SEVERABILITY

If any term or provision of a Purchase Order or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the Purchase Order or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Purchaser's purpose for entering into the Purchase Order can be fully achieved by the remaining portions of the Purchase Order that have not been severed.

ARTICLE 19 CAPTIONS

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

ARTICLE 20 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees,

agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the Purchase Order and this Master Agreement.

ARTICLE 21 THIRD PARTY ACTION NOTIFICATION

Seller shall notify ITS and Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the Purchase Order or this Master Agreement and/or which may affect the Seller's performance under the Purchase Order or this Master Agreement. Failure of the Seller to provide such written notice to ITS and Purchaser shall be considered a material breach of the Purchase Order and this Master Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 22 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under a Purchase Order and this Master Agreement.

ARTICLE 23 NOTICE

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Seller's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE**. Purchaser's address for notice will be set forth in the applicable Purchase Order. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address or points of contact.

ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Purchase Order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, accountants or

attorneys, shall have unimpeded, prompt access to the Purchase Order, this Master Agreement, and to any of Seller's proposals, books, documents, papers and/or records that are pertinent to the Purchase Order and this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the Purchase Order shall be retained by Seller for three (3) years from the date of receipt of final payment under this Master Agreement and the Purchase Order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 25 INSURANCE

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a certificate of conformity providing the aforesaid coverage.

ARTICLE 26 DISPUTES

26.1 Should disputes arise with respect to a Purchase Order or this Master Agreement, Seller and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Seller agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the Purchase Order and/or this Master Agreement. Should Seller fail to continue without delay to perform its responsibilities under the Purchase Order and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Seller or Purchaser as a result of such failure to proceed shall be borne by Seller and Seller shall make no claim against Purchaser for such costs.

26.2 If Seller and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

- A.** The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) calendar days after presentation of such dispute for his/her decision.
- B.** Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such disputed payments shall not constitute cause for termination or suspension of the Purchase Order and/or this Master Agreement by Seller.
- C.** The Executive Director's decision shall not be a final determination of the parties' rights and obligations under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies available it may have at law or in equity.

ARTICLE 27 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under a Purchase Order and this Master Agreement shall be subject to all Purchaser policies and procedures of which Seller has knowledge, and all

applicable federal, state and local laws and regulations as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the Purchase Order and this Master Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 28 CONFLICT OF INTEREST

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate the Purchase Order and this Master Agreement as to itself only.

ARTICLE 29 SOVEREIGN IMMUNITY

By entering into this Master Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 30 CONFIDENTIAL INFORMATION

30.1 Seller shall treat all Purchaser data and information to which it has access by its performance under the Purchase Order and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the Purchase Order or this Master Agreement and shall continue in full force and effect and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the purchase order or this Master Agreement on behalf of, or under the rights of the Seller following any termination or completion of the Purchase Order or this Master Agreement.

30.2 Purchaser shall treat all documents it receives from the Seller that are marked "Confidential" by the Seller as confidential and proprietary and shall not disclose such documents to a third party without Seller's specific written consent. In the event that the Purchaser receives notice that a third party requests divulgence of such confidential information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Purchaser shall promptly inform the Seller and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law.

30.3 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that the Purchase Order and this Master Agreement do not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

30.4 Seller understands and agrees that due to the very nature of the services to be performed on Purchaser's systems, any and all proposals, reports and documents created during any project resulting from RFP No. 3612 shall be classified as confidential and shall not be available for public disclosure.

ARTICLE 31 EFFECT OF SIGNATURE

Each person signing a Purchase Order or this Master Agreement represents that he or she has read the Purchase Order and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the Purchase Order or this Master Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, the Purchase Order and this Master Agreement shall not be construed or interpreted in favor of or against the State or the Seller on the basis of draftsmanship or preparation hereof.

ARTICLE 32 STATE PROPERTY

Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller's use in connection with work performed pursuant to any Purchase Order. Seller shall reimburse the Purchaser for any loss or damage, normal wear and tear excepted.

ARTICLE 33 NEWS RELEASES

News releases pertaining to a Purchase Order or this Master Agreement or the products, study, data, or project to which it relates will not be made without Purchaser's prior written approval, and then only in accordance with the explicit written instructions from Purchaser.

ARTICLE 34 SURVIVAL

Articles 8, 16, 20, 24, 29, 30, 35, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Purchase Order or this Master Agreement.

ARTICLE 35 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

The Purchaser shall own all files, work papers, documentation, and/or other material, electronic or otherwise, collected and created in connection with work performed under a Purchase Order, whether completed or in progress, except for: (a) Seller's internal administrative and quality assurance files and internal project correspondence; (b) documents, objects or things owned by Seller and pre-existing the work performed under the Purchase Order, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the Purchase Order.

ARTICLE 36 ENTIRE AGREEMENT

36.1 This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic

version of Seller-furnished software, or any “click-wrap” or “browse-wrap” license presented in connection with a purchase via the internet. The published EPL, the actual Purchase Order, RFP No. 3612, and Seller’s Proposal submitted in response thereto are hereby incorporated into and made a part of this Master Agreement as far as the individual Purchaser is concerned.

36.2 The Master Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** The Exception Summary as agreed to by ITS and Seller;
- B.** This Master Agreement signed by Seller and ITS;
- C.** Any Exhibits attached to this Master Agreement;
- D.** The published Security Hardware & Software EPL;
- E.** RFP No. 3612 and all written clarifications/addenda;
- F.** Official written correspondence from ITS to Seller;
- G.** Official written correspondence from Seller to ITS when clarifying Seller’s proposal, and
- H.** Seller’s Proposal, as accepted by ITS, in response to RFP No. 3612, and
- I.** The actual Purchase Order, or additional contract terms between Purchaser and Seller if required.

36.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. The Exception Summary”) and the lowest document is listed last (“I. The actual Purchase Order”).

ARTICLE 37 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen

property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 38 NETWORK SECURITY

Seller and Purchaser understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Master Agreement, Seller and Purchaser agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Seller agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on Seller's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require Seller to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

ARTICLE 39 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Seller's liability for a specific project shall not exceed twice the total amount paid by Purchaser to Seller under the applicable Purchase Order. In no event will Seller be liable to Purchaser for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Seller was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud, bad faith, infringement issues, bodily injury, death, physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Seller. The language contained herein tending to limit the liability of the Seller will apply to Purchaser to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Seller is precluded from relying on any contractual damages limitation language within this article where the Seller acts fraudulently or in bad faith.

For the faithful performance of the terms of this Master Agreement, the parties have caused this Master Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of
Information Technology Services, on
behalf of the agencies and institutions
of the State of Mississippi**

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

**EXHIBIT B
STANDARD CONTRACT
ARRA Version**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with ITS.

Due to the need for uniformity among EPL Vendors, the term of the Master Purchase Agreement are non-negotiable.

**MASTER PURCHASE AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI**

This Master Purchase Agreement (hereinafter referred to as "Master Agreement") is entered into by and between INSERT VENDOR NAME a INSERT STATE OF INCORPORATION corporation having its principal offices at INSERT VENDOR STREET ADDRESS (hereinafter referred to as "Seller") and the Mississippi Department of Information Technology Services, having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as "Purchaser"). ITS and Purchaser are sometimes collectively referred to herein as "State."

WHEREAS, ITS, pursuant to Request for Proposals ("RFP") Number 3612 requested proposals for the acquisition of a master contract containing the terms and conditions which will govern any orders placed by Purchaser during the term of this Master Agreement for security related hardware and software (hereinafter referred to as "Products"); and

WHEREAS, the Seller was one of the successful respondents in an open, fair and competitive procurement process to provide the above mentioned Services;

NOW THEREFORE, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 TERM OF AGREEMENT

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective

on the date it is signed by all parties (the “Effective Date”) and will continue in effect for one (1) year thereafter, or until all warranties provided by Seller to Purchaser have expired, whichever occurs last (hereinafter referred to as “Initial Term”). At the end of the Initial Term, the Master Agreement may, upon the written agreement of ITS and Seller, be renewed for an additional term, the length of which will be agreed upon by the parties. Seller will notify ITS sixty (60) days in advance prior to the expiration of the Initial Term or any renewal term and ITS shall have thirty (30) days in which to notify Seller of its intention to either renew or cancel this Master Agreement.

ARTICLE 2 DEFINITIONS

The following terms as used herein shall have the following meanings:

2.1 “Purchase Order” means the document pursuant to which, among other things, Purchaser orders the Products from Seller.

2.2 “Purchaser” means, in each instance, the governmental agency, educational institution or other governing authority of the state of Mississippi who procures security related Products from Seller pursuant to this Master Agreement, and who shall be bound by the terms and conditions of this Master Agreement.

2.3 “Seller” means **INSERT VENDOR NAME** and its successors and assigns.

ARTICLE 3 MODIFICATION OR RENEGOTIATION

This Master Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Master Agreement in the event that federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement necessary.

ARTICLE 4 INCLUDED PARTIES AND PRICING

Seller will accept orders from and furnish the Products under this Master Agreement to Purchasers in line with ITS policies and procedures, at prices not to exceed those prices specified in the published Express Products List (“EPL”). At the end of the Initial Term of this Master Agreement, ITS and Seller may mutually agree in writing to modify, amend or replace the pricing specified in the published EPL.

ARTICLE 5 ORDERS

5.1 The State does not guarantee that it will purchase any certain amount under this Master Agreement.

5.2 When a Purchaser decides to procure any Products from Seller, the Purchaser, after following applicable state procurement rules and regulations, may issue a Purchase Order to

Seller. The Purchase Order shall reference this Master Agreement and shall set forth the Products to be procured; the prices for same; any warranty period; the specific details of the transaction, the Purchaser's designated contact, and any additional terms and conditions that apply to the specific Purchase Order as agreed to in writing by the parties. Any additional terms and conditions contained in any Purchase Order shall apply solely to the Products being procured therein. All Purchase Orders shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a Purchase Order, in the event of a conflict between the other terms and conditions in a Purchase Order and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. The parties agree that the Purchaser has the right to adjust the quantities of purchases based upon the availability of funding or as determined necessary by the Purchaser.

5.3 Seller guarantees pricing for the Initial Term of this Master Agreement. In the event Seller announces or implements a national price decrease for the Products bid during that time, Seller agrees to extend the new, lower pricing to Purchaser.

ARTICLE 6 METHOD AND TIME OF PAYMENT

6.1 Once the Products have been accepted by Purchaser as prescribed in Article 7 herein or there has been lack of notice to the contrary, Seller shall submit an invoice for the cost and shall certify that the billing is true and correct. Services will be invoiced as they are rendered. Seller shall submit invoices and supporting documentation electronically to Purchaser during the term of this Master Agreement using the processes and procedures identified by the State. Purchaser agrees to pay Seller in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the Purchaser within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Seller understands and agrees that Purchaser is exempt from the payment of taxes. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Seller's choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Seller shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement".

6.2 If payment of undisputed amounts is not made to Seller within forty-five (45) days of Purchaser's receipt of the invoice, Purchaser shall be liable to Seller for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

6.3 Acceptance by Seller of the last payment from the Purchaser under a Purchase Order shall operate as a release of all claims for payment against the State by Seller and any subcontractors or other persons supplying labor or materials used in the performance of any work under a Purchase Order.

ARTICLE 7 DELIVERY, RISK OF LOSS, INSTALLATION, AND ACCEPTANCE

7.1 Seller shall deliver the Products to the location specified by Purchaser and pursuant to the delivery schedule mutually agreed to by the parties.

7.2 Seller shall assume and shall bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

7.3 If installation by Seller is required, Seller shall complete installation of the Products pursuant to the requirements of the Purchaser based on the guidelines specified in RFP No. 3612. Seller acknowledges that installation shall be accomplished with minimal interruption of Purchaser's normal day to day operations.

7.4 If installation by Seller is required, Seller shall be responsible for installing all Products and materials in accordance with all state, federal and industry standards for such items.

7.5 If installation by Seller is required, Seller shall provide Purchaser with an installation schedule identifying the date, time and location within the scheduling deadlines agreed to by the Seller and Purchaser. Seller warrants that all Products shall be properly delivered, installed and integrated, if necessary, for acceptance testing within the scheduling deadlines set forth by Purchaser as the site is deemed ready for installation.

7.6 Seller shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like caused by its personnel and operations during the installation, subject to final approval of Purchaser. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

7.7 Unless a different acceptance period is agreed upon by the Purchaser and Seller, Purchaser shall accept or reject the Products provided by Seller after a ten (10) working day testing period utilizing testing criteria developed by Purchaser. During the acceptance period, Purchaser shall have the opportunity to evaluate and test the Products to confirm that they perform without any defects and perform pursuant to the specifications set forth in RFP No. 3612. Purchaser shall notify Seller in writing of its acceptance of the Products.

7.8 In the event the Product fails to perform as stated in Article 7.7 herein, Purchaser shall notify Seller. Unless a different period of time is agreed upon by the Seller and Purchaser, Seller shall, within four (4) working days, correct the defects identified by Purchaser or replace the defective Product. If Seller is unable to correct the defects or replace the defective Product, Purchaser reserves the right to return the Product to Seller at the Seller's expense; to cancel the Purchase Order, and to cancel this Master Agreement as to itself only.

7.9 Upon receipt of a corrected or replaced Product, Purchaser shall have another acceptance period as set forth in Article 7.7 herein, in which to reevaluate/retest such Product.

7.10 If, after Seller has tendered to Purchaser Seller's attempt to correct the Product, Purchaser again determines the Product to have a defect, Purchaser may take such actions as it deems appropriate, including either (i) notifying Seller that it has elected to keep the Product despite such defects; (ii) returning the Product to Seller and providing Seller with an opportunity to deliver a substitute Product acceptable to Purchaser within the time period specified by Purchaser, or (iii) returning the Product to Seller at Seller's expense and canceling the Purchase Order. If the Purchaser returns the Product pursuant to clause (iii) herein, Purchaser may also pursue any remedy available to it in law or in equity.

ARTICLE 8 WARRANTIES

8.1 Seller represents and warrants that the Products provided by Seller to Purchaser shall meet or exceed the minimum specifications set forth in RFP No. 3612 and Seller's Proposal in response thereto.

8.2 Seller represents and warrants that it has the right to sell the Products provided under this Master Agreement.

8.3 Seller represents and warrants that Purchaser shall acquire good and clear title to the hardware Products purchased hereunder, free and clear of all liens and encumbrances.

8.4 Seller represents and warrants that each Product delivered shall be delivered new and not as a "used, substituted, rebuilt, refurbished or reinstalled" Product.

8.5 Seller represents and warrants that it has and will obtain and pass through to Purchaser any and all warranties obtained or available from the manufacturer/licensor of the Product.

8.6 Unless a longer warranty period is specified in the Purchase Order, Seller represents and warrants that all hardware Products provided pursuant to this Master Agreement shall be free from defects in material, manufacture, design and workmanship for a period of one (1) year after acceptance. Seller's obligation pursuant to this warranty shall include, but is not limited to, the

repair or replacement of the hardware Product, or the redoing of the faulty installation, at no cost to Purchaser. In the event Seller can not repair or replace the hardware Product during the warranty period within ten (10) working days after receipt of notice of the defect, Seller shall refund the purchase price of the hardware Product and refund any fees paid for services that directly relate to the defective hardware Product, and Purchaser shall have the right to terminate the Purchase Order and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

8.7 Unless a longer warranty period is specified in the Purchase Order, Seller represents and warrants that all software Products provided pursuant to this Master Agreement shall be free from material defects and provide Purchaser complete functionality as stated in RFP No. 3612 and Seller's Proposal in response thereto for a period of ninety (90) days after acceptance. Seller's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the software Product at the expense of Seller. In the event Seller is unable to repair or replace the software Product within ten (10) working days after receipt of notice of the defect, Purchaser shall be entitled to a full refund of the fees paid and shall have the right to terminate the Purchase Order and this Master Agreement in whole or in part, solely as between those two entities. Purchaser's rights hereunder are in addition to any other rights Purchaser may have.

8.8 Seller represents and warrants that all work hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Master Agreement. For any breach of this warranty, the Seller shall, for a period of ninety (90) days from performance of the services, perform the services again, at no cost to Purchaser, or if Seller is unable to perform the services as warranted, Seller shall reimburse Purchaser the fees paid to Seller for the unsatisfactory services.

8.9 Seller represents and warrants that there is no disabling code or lockup program or device embedded in the software provided to Purchaser. Seller further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Purchaser's use of the software and/or which would restrict Purchaser from accessing its data files or in any way interfere with the transaction of Purchaser's business. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are free of such disabling code, lockup program or device.

8.10 Seller represents and warrants that the software, as delivered to Purchaser, does not contain a computer virus. For any breach of this warranty, Seller at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Purchaser that are

free of any virus, and shall be responsible for repairing, at Seller's expense, any and all damage done by the virus to Purchaser's site.

8.11 Seller represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Seller agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Seller further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Seller understands and agrees that any breach of these warranties may subject Seller to the following: (a) termination of the Purchase Order and this Master Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Seller by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Seller would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

8.12 Seller represents and warrants that no official or employee of Purchaser or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in the Purchase Order.

8.13 The Seller represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Master Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Master Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Seller, terminate the right of the Seller to proceed under this Master Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Seller to any officer or employee of the State of Mississippi with a view toward securing this Master Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS

Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Master Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Seller as it would pursue in the event of a breach of contract by the Seller, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

8.14 Seller represents and warrants that neither the Products, replacement parts, their elements nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Purchaser shall notify Seller promptly of any infringement claim of which it has knowledge, and shall cooperate with Seller in the defense of such claim, all at Seller's expense. Seller, at its own expense, shall defend or settle any and all infringement actions filed against Seller or Purchaser which involve the Products provided under this Master Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against Purchaser. If the continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Seller shall, at its expense: (a) first procure for Purchaser the right to continue using the Products, or upon failing to procure such right; (b) replace or modify the Product or components thereof with non-infringing Products so it becomes non-infringing while maintaining substantially similar functionality, or upon failing to secure either such right, (c) refund to Purchaser the hardware purchase price or software license fees previously paid by Purchaser for the Products Purchaser may no longer use. Said refund shall be paid within ten (10) working days of notice to Purchaser to discontinue said use.

8.15 Seller understands and agrees that some, all or none of the purchases made under this Master Agreement may be funded by the American Recovery and Reinvestment Act of 2009 (hereinafter referred to as "ARRA") and, as such, represents and warrants that for any ARRA purchases, it will comply with the requirements of ARRA as set forth in Exhibit A, which is attached hereto and incorporated herein by reference and will maintain adequate records to verify its full compliance with those requirements.

ARTICLE 9 TITLE TO EQUIPMENT

Title to the hardware Products provided under this Master Agreement shall pass to Purchaser upon its acceptance of the hardware Product.

ARTICLE 10 SOFTWARE

10.1 Seller shall furnish the software to Purchaser as set forth in Purchase Orders and shall acquire the right to license the software to Purchaser. For purposes of this Article, the term "Purchaser" means the governmental agency, educational institution or other governing authority within the State of Mississippi submitting the Purchase Order, its employees and any third party

consultants or outsourcers engaged by Purchaser who have a need to know, and who shall be bound by the terms and conditions of this license and Master Agreement.

10.2 Seller accepts sole responsibility for (a) Purchaser's system configuration, design and requirements; (b) the selection of the software to achieve Purchaser's intended results; (c) the results obtained from the software, and (d) modifications, changes or alterations to the software provided by Seller.

10.3 Seller understands and agrees that Purchaser shall have: (a) a non-exclusive, non-transferable, enterprise-wide unlimited and perpetual license (unless specified as a term license in the Purchase Order) for the software provided pursuant a Purchase Order; (b) the right to use and customize the software products and the related documentation for Purchaser's business operations and in accordance with the terms and conditions of this Master Agreement; (c) unlimited use by licensed users of the software products acquired for Purchaser's operations; (d) use of such software products with a backup platform system should it be deemed necessary by Purchaser; (e) the right to copy such software for safekeeping, backup and disaster recovery purposes; (f) the right to combine the software with other programs and modules, and the right to create interfaces to other programs, and (g) the right to reproduce any and all physical documentation supplied under the terms of this Master Agreement.

10.4 Purchaser agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the software without the prior written consent of Seller. All title and proprietary rights, whether tangible or intangible, including but not limited to, copyright, trademark and trade secret rights, in and to the software are retained by the Seller or the third party software manufacturer as applicable. Purchaser agrees to reproduce and include the copyright, trademark and other proprietary rights notices on any copies made of the software and documentation.

ARTICLE 11 EMPLOYMENT STATUS

11.1 Seller shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship, partnership, agency, or joint venture relationship.

11.2 Seller represents that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties identified in a Purchase Order. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be employees of Purchaser. Seller shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Seller nor employees of Seller are entitled to state retirement or leave

benefits.

11.3 Any person assigned by Seller to perform the services hereunder shall be the employee of Seller, who shall have the sole right to hire and discharge its employee. Purchaser may, however, direct Seller to replace any of its employees performing services under this Master Agreement.

ARTICLE 12 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Seller will be responsible for the behavior of all its employees and subcontractors while on the premises of any Purchaser location. Any Seller employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of Purchaser's staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Seller employees and subcontractors who will be working at such locations shall be covered by Seller's comprehensive general liability insurance policy.

ARTICLE 13 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

13.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Seller represents all contractors, third parties, and/or subcontractors Seller has assembled for any given Purchaser project. The Purchaser is required to negotiate only with Seller, as Seller's commitments are binding on all proposed contractors, third parties, and subcontractors.

13.2 Seller may not assign or otherwise transfer the Purchase Order or this Master Agreement or its obligations hereunder without the prior written consent of ITS and Purchaser, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The Purchase Order and this Master Agreement shall be binding upon the parties' respective successors and assigns.

13.3 Seller must obtain the written approval of Purchaser before subcontracting any portion of the Purchase Order and this Master Agreement. No such approval by Purchaser of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Purchaser in addition to the total fixed price agreed upon in the Purchase Order. All subcontracts shall incorporate the terms of the applicable Purchase Order and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Purchaser may deem necessary.

13.4 Seller represents and warrants that any subcontract agreement Seller enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Purchaser, and that the subcontractor acknowledges that no privity of contract exists between the Purchaser and the subcontractor and that Seller is solely liable for any and all payments which may be due to the subcontractor

pursuant to its subcontract agreement with Seller. Seller shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Seller's failure to pay any and all amounts due by Seller to any subcontractor, materialman, laborer or the like.

13.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Seller and the Purchaser, where such dispute affects the subcontract.

ARTICLE 14 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Purchaser to proceed under this Master Agreement and the Purchase Order is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Master Agreement. It is understood that Purchaser will not issue a Purchase Order unless the Purchaser has committed funding for such Purchase Order. If the funds anticipated for the fulfillment of this Master Agreement and the Purchase Order are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Purchaser for the payments or performance due under this Master Agreement, Purchaser shall have the right to immediately terminate the Purchase Order and this Master Agreement as to itself only, without damage, penalty, cost or expense to Purchaser of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Purchaser shall have the sole right to determine whether funds are available for the payments or performances due under the Purchase Order and this Master Agreement. In the event of termination due to unavailability of funds, Seller shall be paid for services rendered by Seller in connection with this Master Agreement and accepted by Purchaser prior to the date of receipt of notification of termination.

ARTICLE 15 TERMINATION

15.1 Termination Upon Mutual Agreement: A Purchase Order may be terminated in whole or in part upon the mutual written agreement of Seller and the Purchaser.

15.2 Termination Due To Bankruptcy: Should Seller become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Purchaser may, upon the giving of thirty (30) days prior written notice, terminate a Purchase Order and this Master Agreement without the assessment of penalties, solely as between those two parties.

15.3 Termination Other Than For Cause: A Purchaser may terminate a Purchase Order and this Master Agreement as to itself only, in whole or in part and without the assessment

of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Seller.

15.4 Termination For Cause: If Purchaser or Seller fail to comply with the terms and conditions of the Purchase Order or this Master Agreement, either Purchaser or Seller may terminate the Purchase Order and this Master Agreement solely as between those two entities and without the assessment of any penalties, upon thirty (30) calendar days prior written notice unless the defaulting party cures such breach within such thirty (30) calendar day period, or such other cure period as may be mutually agreed upon by Seller and Purchaser. Provided that, if the Purchaser terminates a Purchase Order and this Master Agreement solely as between those two entities because of Seller's inability to cure material defects after notice and opportunity to cure, the Purchaser may terminate the Purchase Order and this Master Agreement solely as between those two entities without also providing the notice and opportunity to cure required in this Article. The non-defaulting party may also pursue any remedy available to it in law or in equity.

15.5 Termination of Master Agreement: ITS may terminate this Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Seller but any Purchase Order entered into prior to the termination date of this Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Purchase Orders.

15.6 Upon termination of a Purchase Order, Seller shall refund any and all applicable unexpended pro-rated maintenance/service fees previously paid by the Purchaser. Further, in the event a Purchase Order is terminated, Seller shall be paid for work completed by Seller and accepted by Purchaser prior to the termination. Such compensation shall be based upon and shall not exceed the amounts set forth in the particular Purchase Order.

ARTICLE 16 GOVERNING LAW

This Master Agreement and each Purchase Order shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Seller expressly agrees that under no circumstances shall Purchaser or ITS be obligated to pay an attorneys fee, prejudgment interest or the cost of legal action to Seller. Further, nothing in this Master Agreement shall affect any statutory rights Seller and Purchaser may have that cannot be waived or limited by contract.

ARTICLE 17 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or

power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

ARTICLE 18 SEVERABILITY

If any term or provision of a Purchase Order or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the Purchase Order or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Purchaser's purpose for entering into the Purchase Order can be fully achieved by the remaining portions of the Purchase Order that have not been severed.

ARTICLE 19 CAPTIONS

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

ARTICLE 20 HOLD HARMLESS

To the fullest extent allowed by law, Seller shall indemnify, defend, save and hold harmless, protect and exonerate Purchaser, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Seller and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform the Purchase Order and this Master Agreement.

ARTICLE 21 THIRD PARTY ACTION NOTIFICATION

Seller shall notify ITS and Purchaser in writing within five (5) business days of Seller filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Seller or Purchaser by any entity that may result in litigation related in any way to the Purchase Order or this Master Agreement and/or which may affect the Seller's performance under the Purchase Order or this Master Agreement. Failure of the Seller to provide such written notice to ITS and Purchaser shall be considered a material breach of the Purchase Order and this Master Agreement and the Purchaser may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 22 AUTHORITY TO CONTRACT

Seller warrants that it is a validly organized business with valid authority to enter into this Master

Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under a Purchase Order and this Master Agreement.

ARTICLE 23 NOTICE

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Seller's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF VENDOR PERSON FOR NOTICE**. Purchaser's address for notice will be set forth in the applicable Purchase Order. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address or points of contact.

ARTICLE 24 RECORD RETENTION AND ACCESS TO RECORDS

Seller shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Purchase Order. The Purchaser, ITS, any state or federal agency authorized to audit Purchaser, and/or any of their duly authorized representatives, accountants or attorneys, shall have unimpeded, prompt access to the Purchase Order, this Master Agreement, and to any of Seller's proposals, books, documents, papers and/or records that are pertinent to the Purchase Order and this Master Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Seller's office as applicable where such records are kept during normal business hours. All records relating to this Master Agreement and the Purchase Order shall be retained by Seller for three (3) years from the date of receipt of final payment under this Master Agreement and the Purchase Order. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 25 INSURANCE

Seller represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Seller's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Seller will, upon request, furnish Purchaser with a

certificate of conformity providing the aforesaid coverage.

ARTICLE 26 DISPUTES

26.1 Should disputes arise with respect to a Purchase Order or this Master Agreement, Seller and Purchaser agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Seller agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under the Purchase Order and/or this Master Agreement. Should Seller fail to continue without delay to perform its responsibilities under the Purchase Order and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Seller or Purchaser as a result of such failure to proceed shall be borne by Seller and Seller shall make no claim against Purchaser for such costs.

26.2 If Seller and Purchaser cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

- A.** The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) calendar days after presentation of such dispute for his/her decision.
- B.** Purchaser may withhold payments on disputed items pending resolution of the dispute. The withholding of such disputed payments shall not constitute cause for termination or suspension of the Purchase Order and/or this Master Agreement by Seller.
- C.** The Executive Director's decision shall not be a final determination of the parties' rights and obligations under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies available it may have at law or in equity.

ARTICLE 27 COMPLIANCE WITH LAWS

Seller shall comply with, and all activities under a Purchase Order and this Master Agreement shall be subject to all Purchaser policies and procedures of which Seller has knowledge, and all applicable federal, state and local laws and regulations as now existing and as may be amended or modified. Specifically, but not limited to, Seller shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the Purchase Order and this Master Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 28 CONFLICT OF INTEREST

Seller shall notify Purchaser of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Purchaser's satisfaction, Purchaser reserves the right to terminate the Purchase Order and this Master Agreement as to itself only.

ARTICLE 29 SOVEREIGN IMMUNITY

By entering into this Master Agreement with Seller, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 30 CONFIDENTIAL INFORMATION

30.1 Seller shall treat all Purchaser data and information to which it has access by its performance under the Purchase Order and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Purchaser. In the event that Seller receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Seller shall promptly inform Purchaser and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the Purchase Order or this Master Agreement and shall continue in full force and effect and shall be binding upon the Seller and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the purchase order or this Master Agreement on behalf of, or under the rights of the Seller following any termination or completion of the Purchase Order or this Master Agreement.

30.2 Purchaser shall treat all documents it receives from the Seller that are marked "Confidential" by the Seller as confidential and proprietary and shall not disclose such documents to a third party without Seller's specific written consent. In the event that the Purchaser receives notice that a third party requests divulgence of such confidential information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the Purchaser shall promptly inform the Seller and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law.

30.3 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that the Purchase Order and this Master Agreement do not constitute confidential information, and may be reproduced and distributed by the State without notification to Seller. ITS will provide third party notice to Seller of any requests received by ITS for any such confidential exhibits so as to allow Seller the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

30.4 Seller understands and agrees that due to the very nature of the services to be performed on Purchaser's systems, any and all proposals, reports and documents created during any project resulting from RFP No. 3612 shall be classified as confidential and shall not be available for public disclosure.

ARTICLE 31 EFFECT OF SIGNATURE

Each person signing a Purchase Order or this Master Agreement represents that he or she has read the Purchase Order and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the Purchase Order or this Master Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, the Purchase Order and this Master Agreement shall not be construed or interpreted in favor of or against the State or the Seller on the basis of draftsmanship or preparation hereof.

ARTICLE 32 STATE PROPERTY

Seller shall be responsible for the proper custody of any Purchaser-owned property furnished for Seller's use in connection with work performed pursuant to any Purchase Order. Seller shall reimburse the Purchaser for any loss or damage, normal wear and tear excepted.

ARTICLE 33 NEWS RELEASES

News releases pertaining to a Purchase Order or this Master Agreement or the products, study, data, or project to which it relates will not be made without Purchaser's prior written approval, and then only in accordance with the explicit written instructions from Purchaser.

ARTICLE 34 SURVIVAL

Articles 8, 16, 20, 24, 29, 30, 35, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Purchase Order or this Master Agreement.

ARTICLE 35 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

The Purchaser shall own all files, work papers, documentation, and/or other material, electronic or otherwise, collected and created in connection with work performed under a Purchase Order, whether completed or in progress, except for: (a) Seller's internal administrative and quality assurance files and internal project correspondence; (b) documents, objects or things owned by Seller and pre-existing the work performed under the Purchase Order, and (c) documents, objects or things in which Seller has no right to transfer ownership. As to such documents, objects and things, Seller shall convey such right or interest to the extent allowed by law. Seller shall deliver such documents and work papers to Purchaser upon termination or completion of the Purchase Order.

ARTICLE 36 ENTIRE AGREEMENT

36.1 This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic

version of Seller-furnished software, or any “click-wrap” or “browse-wrap” license presented in connection with a purchase via the internet. The published EPL, the actual Purchase Order, RFP No. 3612, and Seller’s Proposal submitted in response thereto are hereby incorporated into and made a part of this Master Agreement as far as the individual Purchaser is concerned.

36.2 The Master Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** The Exception Summary as agreed to by ITS and Seller;
- B.** This Master Agreement signed by Seller and ITS;
- C.** Any Exhibits attached to this Master Agreement;
- D.** The published Security Hardware & Software EPL;
- E.** RFP No. 3612 and all written clarifications/addenda;
- F.** Official written correspondence from ITS to Seller;
- G.** Official written correspondence from Seller to ITS when clarifying Seller’s proposal, and
- H.** Seller’s Proposal, as accepted by ITS, in response to RFP No. 3612, and
- I.** The actual Purchase Order, or additional contract terms between Purchaser and Seller if required.

36.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Seller. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document (“A. The Exception Summary”) and the lowest document is listed last (“I. The actual Purchase Order”).

ARTICLE 37 DEBARMENT AND SUSPENSION CERTIFICATION

Seller certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c)

are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 38 NETWORK SECURITY

Seller and Purchaser understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Master Agreement, Seller and Purchaser agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Seller agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on Seller's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require Seller to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

ARTICLE 39 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Seller's liability for a specific project shall not exceed twice the total amount paid by Purchaser to Seller under the applicable Purchase Order. In no event will Seller be liable to Purchaser for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Seller was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud, bad faith, infringement issues, bodily injury, death, physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Seller. The language contained herein tending to limit the liability of the Seller will apply to Purchaser to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Seller is precluded from relying on any contractual damages limitation language within this article where the Seller acts fraudulently or in bad faith.

For the faithful performance of the terms of this Master Agreement, the parties have caused this Master Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of
Information Technology Services, on
behalf of the agencies and institutions
of the State of Mississippi**

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

EXHIBIT A
Reporting and Registration Requirements Under Section 1512 of the
American Recovery and Reinvestment Act of 2009.

The recipient* agrees to the following reporting and registration requirements of Section 1512 of the American Recovery and Reinvestment Act and in accordance with 2 CFR § 176.50, if applicable:

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

(e) The contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to title XV, Section 1512 of the ARRA, the State shall require that the contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the contractor's own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

*As used here and hereafter, recipient means "any entity other than an individual that receives Recovery Act funds in the form of a grant, cooperative agreement or loan directly from the Federal Government." 2 CFR § 176.30.

Required Use of American Iron, Steel, and Manufactured Goods Not Covered Under International Agreements Under Section 1605 of the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods of Section 1605 of the American Recovery and Reinvestment Act and in accordance with 2 CFR §176.140 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that does not involve iron, steel, and/or manufactured goods covered under international agreements, if applicable:

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers,

mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic

iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is

nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign

iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<small>[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</small> <small>[Include other applicable supporting information.]</small> <small>[*Include all delivery costs to the construction site.]</small>			

**Required Use of American Iron, Steel, and Manufactured Goods
Covered Under International Agreements Under Section 1605 of the
American Recovery and Reinvestment Act of 2009.**

The recipient agrees to the following required use of American Iron, Steel, and Manufactured Goods (covered under International Agreements) of Section 1605 of the of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.160 when awarding Recovery Act funds for construction, alteration, maintenance, or repair of a public building or public work that involves iron, steel, and/or manufactured goods materials covered under international agreements, if applicable:

(a) *Definitions.* As used in this award term and condition—

Designated country—

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland,

Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good—

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or

subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel, and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multiState, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.*

(1) The award term and condition described in this

section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel,

and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or

other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign

iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<small>[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</small> <small>[Include other applicable supporting information.]</small> <small>[*Include all delivery costs to the construction site.]</small>			

Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act.

The recipient agrees to the following wage rate requirements of Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176.190 when issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair, if applicable:

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the agency shall use the award term described in the following paragraphs:

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the DavisBacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard DavisBacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard DavisBacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of DavisBacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

Recipient Responsibilities regarding tracking and documenting Expenditures under the American Recovery and Reinvestment Act of 2009.

The recipient agrees to the following tracking and documenting responsibilities required by Section 1606 of the Recovery and Reinvestment Act and in accordance with 2 CFR §176210, if applicable:

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111– 5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 “Uniform Administrative Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and NonProfit Organizations,” recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA” in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

Requirement to Comply with Provision of Section 902 of the American Recovery and Reinvestment Act of 2009

Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

(1) Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and (2) Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Required Whistleblower Protection Under Section 1553 of the American Recovery and Reinvestment Act of 2009.

Section 1153 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, provides protections for certain individuals who make specified disclosures relating to recovery Act funds. Any non-federal employer receiving recovery funds is required to post a notice of the rights and remedies provided under this section of the Act.

Required Provision Noting Authority of Inspector General in of Section 1515(a) of the American Recovery and Reinvestment Act of 2009

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Required Provision to Comply with NEPA and NHPA
Construction, Renovation, and Remodeling Projects Only

ARRA funded projects may be required to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related statutes, including requirements for plans and projects to be reviewed and documented in accordance with those processes. If the ARRA program from which funds are to be expended requires such language, then NEPA and NHPA requirements may need to be included in contracts or sub-grants. Such language would be dependent on federal oversight agency guidance as well as from the following: http://nepa.gov/nepa/regs/CEQ_1609_NEPA_Guidance_03-12.pdf (NEPA only)

Requirement to Acknowledge Availability and Use of Funds

Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.

Requirement Regarding Federal, State and Local Tax Obligations

By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.

Requirement to Comply with Anti-Discrimination and Equal Opportunity Statutes

Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, ARRA Recovery funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Requirement to Comply With All Other ARRA Requirements

The contractor will comply with any other requirements of ARRA, upon notification by this entity.

Requirement to Comply with E-Verification Provision of Section 71-11-3 of the Mississippi Code of 1972, as amended

The respondent represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (§71-11-3 of the Mississippi Code of 1972, as amended) and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject contractor to the following:

- (a) termination of this Agreement and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (b) the loss of any license, permit, certification, or other document granted to contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or both.
- (c) In the event of such termination/cancellation, contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

EXHIBIT C

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (hereinafter referred to as “Agreement”) is entered into by and between **INSERT NAME OF VENDOR** a **INSERT STATE OF INCORPORATION** corporation (hereinafter referred to as “Contractor”) having an office at **INSERT STREET ADDRESS FOR VENDOR**, and **{INSERT NAME OF CUSTOMER AGENCY}**, having its principal place of business at **{INSERT STREET ADDRESS FOR CUSTOMER AGENCY}** (hereinafter referred to as “Customer Agency”). Contractor and the Customer Agency are collectively referred to herein as “the Parties”.

WHEREAS, confidential information (hereinafter referred to as “Information” and “Confidential Information”) may be used for evaluating transactions between the Parties; and

WHEREAS, the Parties desire to protect any such confidential information, and each of us agrees that the following terms apply when Customer Agency (Discloser) discloses Information to the Contractor (Recipient);

NOW THEREFORE, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 DISCLOSURE OF INFORMATION

Information will be disclosed either:

- 1) in writing;
- 2) by delivery of items;
- 3) by initiation of access to Information, such as may be in a data base; or
- 4) by oral or visual presentation.

Information should be marked with a restrictive legend of the Discloser. Excluding Information obtained via electronic access, if Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

ARTICLE 2 USES AND OWNERSHIP OF CONFIDENTIAL INFORMATION

Confidential Information will be used for evaluating transactions between the Parties and/or their employees. Duplication, distribution or disclosure of any Confidential Information to any persons other than the Parties’ employees who (a) are actively and directly participating in the evaluation of the transaction or (b) those who otherwise need to know such information for the

purpose of evaluating each transaction, and who agree to keep such information confidential and be bound by this Agreement as if they were signatories is strictly prohibited. Before disclosure to any of the above mentioned employees, the Contractor will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement. The Contractor will also maintain a list specifying to whom Confidential Information has been disclosed and shall deliver to the Customer Agency, upon written request, a copy of such list, specifying the Confidential Information disclosed or provided and the date on which such Confidential Information was first disclosed. Both Parties agree to the determination of the other regarding the classification of their Confidential Information and to take appropriate steps to safeguard it from disclosure. The Contractor agrees to take appropriate steps to safeguard the Confidential Information from disclosure by using the same degree of care as the Contractor uses to prevent the unauthorized disclosure of its own confidential information, but no less than a reasonable degree of care. Further, the Contractor will advise Customer Agency in writing of any misappropriation or misuse of the Confidential Information of which the Contractor becomes aware. The Contractor is liable for any breach by it or its employees. Modification, alteration, breakdown, disassembly or reverse engineering of any Confidential Information is prohibited without prior written consent. Confidential Information is the property of the original disseminator. Derivatives and improvements are property of the disseminator of the Confidential Information from which the derivative improvement arises.

ARTICLE 3 CONFIDENTIALITY PERIOD

The Parties understand and agree that their obligations under this Confidentiality Agreement shall continue in effect in perpetuity or until such time as the Information becomes general public knowledge through no fault of their own.

ARTICLE 4 EXCEPTIONS TO CONFIDENTIAL INFORMATION

Confidential Information does not include information that is: (a) already in the Recipient's possession without obligation of confidentiality; (b) developed independently, or (c) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient.

ARTICLE 5 REQUEST FOR DISCLOSURE OF INFORMATION

If either of the Parties is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, other process, or an order issued by a court or by a local, state or federal regulatory or administrative body) to disclose Confidential Information, each agrees to immediately notify the other of the existence, terms and circumstances surrounding such request or order; consult with the other on the advisability of the owner of the Confidential Information taking steps to resist or narrow such request or order, and refrain from opposing any action by the owner of the Confidential Information to obtain an

appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

ARTICLE 6 RETURN/DESTRUCTION OF CONFIDENTIAL INFORMATION

Upon the written request of the Customer Agency, the Contractor shall: (a) return all Confidential Information in whatever form; (b) destroy or delete the Confidential Information and all copies, reproductions, summaries, analyses, or extracts thereof based on the Confidential Information that it cannot return; and (c) certify in writing that it has complied with this section. Upon the request, such destruction will be certified in writing under penalty of perjury by an authorized employee who supervised the destruction thereof. Notwithstanding the return or destruction of the Confidential Information, the Contractor and its employees shall continue to be bound by the obligations hereunder.

ARTICLE 7 REMEDIES FOR BREACH

In the event of any violation or threatened violation of this Agreement by the Contractor, the Customer Agency shall be authorized and entitled to petition the Court for injunctive or other suitable judicial relief, as well as judgment for all of its damages, costs and expenses, including but not limited to, attorneys' fees and costs.

ARTICLE 8 MISCELLANEOUS

This Agreement will be binding upon and for the benefit of the Parties, their successors and permitted assigns. The Contractor may not assign its rights or delegate its duties or obligations under this Agreement. Failure to enforce any provision of this Agreement will not constitute a waiver of that or any other provision. If a court of competent jurisdiction holds any part of this Agreement invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions will not be affected. This document contains the entire agreement between the Parties with respect to its subject matter and supersedes any previous understanding, commitments, or agreements, oral or written. All additions or modifications to this Agreement must be in a writing signed by all Parties and referring expressly to this Agreement. The headings in this Agreement are for reference only and shall not affect interpretation of this Agreement.

ARTICLE 9 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. The address for the Customer Agency is: **INSERT NAME, TITLE, &**

ADDRESS OF CUSTOMER AGENCY FOR NOTICE. The Contractor's address for notice is: **INSERT NAME, TITLE, & ADDRESS OF CONTRACTOR FOR NOTICE.** Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 10 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

{ TYPE NAME OF CUSTOMER AGENCY }

INSERT NAME OF CONTRACTOR

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____